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BEFORE THE  
BOARD OF PODIATRIC MEDICINE  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 1B-2001-125040

WAYNE CHARLES RASH, D.P.M.  
2095 N. Waterman Avenue  
San Bernardino CA 92404

ACCUSATION

Podiatric Medicine Certificate No. E3888

Respondent.

Complainant alleges:

PARTIES

1. James Rathlesberger (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Board of Podiatric Medicine, Department of Consumer Affairs.

2. On or about August 23, 1993, the Board of Podiatric Medicine issued License Number E3888 to Wayne Charles Rash, D.P.M. (Respondent). The License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2005, unless renewed.

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1 Section 2220) in accordance with Section 2222.

2 "(b) The board may hear all matters, including but not limited to, any contested  
3 case or may assign any such matters to an administrative law judge. The proceedings  
4 shall be held in accordance with Section 2230. If a contested case is heard by the board  
5 itself, the administrative law judge who presided at the hearing shall be present during the  
6 board's consideration of the case and shall assist and advise the board."

7 7. Section 2497.5 of the Code states:

8 "(a) The board may request the administrative law judge, under his or her  
9 proposed decision in resolution of a disciplinary proceeding before the board, to direct  
10 any licensee found guilty of unprofessional conduct to pay to the board a sum not to  
11 exceed the actual and reasonable costs of the investigation and prosecution of the case.

12 "(b) The costs to be assessed shall be fixed by the administrative law judge and  
13 shall not in any event be increased by the board. When the board does not adopt a  
14 proposed decision and remands the case to an administrative law judge, the  
15 administrative law judge shall not increase the amount of any costs assessed in the  
16 proposed decision.

17 "(c) When the payment directed in the board's order for payment of costs is not  
18 made by the licensee, the board may enforce the order for payment by bringing an action  
19 in any appropriate court. This right of enforcement shall be in addition to any other rights  
20 the board may have as to any licensee directed to pay costs.

21 "(d) In any judicial action for the recovery of costs, proof of the board's decision  
22 shall be conclusive proof of the validity of the order of payment and the terms for  
23 payment.

24 "(e)(1) Except as provided in paragraph (2), the board shall not renew or reinstate  
25 the license of any licensee who has failed to pay all of the costs ordered under this  
26 section.

27 "(e)(2) Notwithstanding paragraph (1), the board may, in its discretion,  
28 conditionally renew or reinstate for a maximum of one year the license of any licensee

1 who demonstrates financial hardship and who enters into a formal agreement with the  
2 board to reimburse the board within one year period for those unpaid costs.

3 "(f) All costs recovered under this section shall be deposited in the Podiatry Fund  
4 as a reimbursement in either the fiscal year in which the costs are actually recovered or  
5 the previous fiscal year, as the board may direct.

6 8. Section 2234 of the Code states:

7 "The Division of Medical Quality shall take action against any licensee who is  
8 charged with unprofessional conduct. In addition to other provisions of this article,  
9 unprofessional conduct includes, but is not limited to, the following:

10 "(a) Violating or attempting to violate, directly or indirectly, assisting in or  
11 abetting the violation of, or conspiring to violate any provision of this chapter [Chapter 5,  
12 the Medical Practice Act].

13 "(b) Gross negligence.

14 "(c) Repeated negligent acts. To be repeated, there must be two or more  
15 negligent acts or omissions. An initial negligent act or omission followed by a separate  
16 and distinct departure from the applicable standard of care shall constitute repeated  
17 negligent acts.

18 "(1) An initial negligent diagnosis followed by an act or omission medically  
19 appropriate for that negligent diagnosis of the patient shall constitute a single negligent  
20 act.

21 "(2) When the standard of care requires a change in the diagnosis, act, or  
22 omission that constitutes the negligent act described in paragraph (1), including, but not  
23 limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's  
24 conduct departs from the applicable standard of care, each departure constitutes a separate  
25 and distinct breach of the standard of care.

26 "(d) Incompetence.

27 "(e) The commission of any act involving dishonesty or corruption which is  
28 substantially related to the qualifications, functions, or duties of a physician and surgeon.

1                   "(f) Any action or conduct which would have warranted the denial of a  
2                   certificate."

3                   9.       Section 2236 of the Code states:

4                   "(a) The conviction of any offense substantially related to the qualifications,  
5                   functions, or duties of a physician and surgeon constitutes unprofessional conduct within  
6                   the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of  
7                   conviction shall be conclusive evidence only of the fact that the conviction occurred.

8                   "(b) The district attorney, city attorney, or other prosecuting agency shall notify  
9                   the Division of Medical Quality of the pendency of an action against a licensee charging a  
10                  felony or misdemeanor immediately upon obtaining information that the defendant is a  
11                  licensee. The notice shall identify the licensee and describe the crimes charged and the  
12                  facts alleged. The prosecuting agency shall also notify the clerk of the court in which the  
13                  action is pending that the defendant is a licensee, and the clerk shall record prominently  
14                  in the file that the defendant holds a license as a physician and surgeon.

15                  "(c) The clerk of the court in which a licensee is convicted of a crime shall,  
16                  within 48 hours after the conviction, transmit a certified copy of the record of conviction  
17                  to the board. The division may inquire into the circumstances surrounding the  
18                  commission of a crime in order to fix the degree of discipline or to determine if the  
19                  conviction is of an offense substantially related to the qualifications, functions, or duties  
20                  of a physician and surgeon.

21                  "(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is  
22                  deemed to be a conviction within the meaning of this section and Section 2236.1. The  
23                  record of conviction shall be conclusive evidence of the fact that the conviction  
24                  occurred."

25                  10.       Section 2239 of the Code states:

26                  "(a) The use or prescribing for or administering to himself or herself, of any  
27                  controlled substance; or the use of any of the dangerous drugs specified in Section 4022,  
28                  or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or

1 injurious to the licensee, or to any other person or to the public, or to the extent that such  
2 use impairs the ability of the licensee to practice medicine safely or more than one  
3 misdemeanor or any felony involving the use, consumption, or self-administration of any  
4 of the substances referred to in this section, or any combination thereof, constitutes  
5 unprofessional conduct. The record of the conviction is conclusive evidence of such  
6 unprofessional conduct.

7 "(b) A plea or verdict of guilty or a conviction following a plea of nolo  
8 contendere is deemed to be a conviction within the meaning of this section. The Division  
9 of Medical Quality may order discipline of the licensee in accordance with Section 2227  
10 or the Division of Licensing may order the denial of the license when the time for appeal  
11 has elapsed or the judgment of conviction has been affirmed on appeal or when an order  
12 granting probation is made suspending imposition of sentence, irrespective of a  
13 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such  
14 person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting  
15 aside the verdict of guilty, or dismissing the accusation, complaint, information, or  
16 indictment."

#### 17 FIRST CAUSE FOR DISCIPLINE

##### 18 (Conviction of a Crime)

19 11. Respondent is subject to disciplinary action under section 2236 in that he  
20 was convicted of an offense substantially related to the qualification, functions, or duties of a  
21 podiatrist. The circumstances are as follows:

22 12. On or about October 1, 2001, respondent was charged in felony complaint  
23 (Complaint) with two counts of insurance fraud in violation of Penal Code section 550(A)(1) in  
24 the case of *People of the State of California vs. Wayne Charles Rash*, San Bernardino County  
25 Superior Court case no. FSB 032073. Count 1 alleged that on or about January 11, 2000 through  
26 March 20, 2000, respondent knowingly presented a false and fraudulent claim to the Premier  
27 Lease and Loan Services and Great American Insurance Company for the payment of bone  
28 densitometer, in the amount of \$32,441.37. Count 2 alleged that on or about January 11, 2000

1 through January 27, 2000, respondent knowingly presented a false and fraudulent claim to State  
2 Farm Insurance Company for a laptop computer in the amount of \$2,110.93.

3 13. On February 15, 2002, the Complaint was amended by interlineation to  
4 add Count 3, grand theft in violation of Penal Code section 487(a). Pursuant to a plea bargain  
5 agreement respondent pled nolo contendere to Count 3, with the remaining counts being  
6 dismissed.

7 14. On March 18, 2002, the San Bernardino County Superior Court  
8 pronounced Judgment, granting respondent 3 years formal probation upon conditions including  
9 that he serve 2 days in jail with credit for time served of 2 days, and restitution of \$32,441.37 to  
10 Premier Insurance Agency.

11 SECOND CAUSE FOR DISCIPLINE

12 (Dangerous Misuse of Alcohol)

13 15. Respondent is subject to disciplinary action under section 2239 in that he  
14 used alcoholic beverages in such a manner as to be dangerous to him, other persons and to the  
15 public. The circumstances are as follows:

16 16. On or about August 23, 2003, at approximately 1:42 a.m., respondent  
17 erratically drove a black Mercedes C230 automobile in the number 2 northbound lane on  
18 Interstate 15 in the City of Norco. Respondent abruptly swerved the vehicle from the number 2  
19 lane into both the number 1 and number 3 lanes. He was stopped by a California Highway Patrol  
20 Officer near the Limonite Avenue exit. At the time of the traffic stop, respondent had red and  
21 watery eyes and smelled like an alcoholic beverage.

22 17. In response to the CHP officer's question, respondent denied he had been  
23 drinking. Respondent was unable to satisfactorily perform field sobriety tests. He provided one  
24 sample of a preliminary alcohol screen test and had a reading of .09%. Respondent was arrested  
25 and taken to Riverside County Jail where he gave a blood sample showing he had a blood alcohol  
26 level of .08%.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Dishonesty)

3 18. Respondent is subject to disciplinary action under section 2234 (e) in that  
4 he committed acts involving dishonesty or corruption which are substantially related to the  
5 qualifications, functions, or duties of a physician and surgeon. The circumstances are as follows:

6 19. The allegations set forth in paragraphs 11 through 14 are incorporated by  
7 reference.

8 20. Respondent filed false police reports and committed insurance fraud

9 PRAAYER


10 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
11 alleged, and that following the hearing, the Board of Podiatric Medicine issue a decision:

12 1. Revoking or suspending Podiatric Medicine Certificate Number E3888,  
13 issued to Wayne Charles Rash, D.P.M.;

14 2. Ordering Wayne Charles Rash, D.P.M. to pay the Board of Podiatric  
15 Medicine the reasonable costs of the investigation and enforcement of this case, pursuant to  
16 Business and Professions Code section 2497.5;

17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: December 29, 2003

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21 JAMES RATHLESBERGER  
22 Executive Officer  
23 Board of Podiatric Medicine  
24 Department of Consumer Affairs  
25 State of California  
26 Complainant

25 03576160-SD2003AD0395  
26 RDH 12-15-03  
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